

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE

Rhonda Grimes Bryant,

Case No. 98-26588

Debtor.

Chapter 7

Keystone Laboratories, Inc.,

Plaintiff,

v.

Adv. Pro. No. 98-1186

Rhonda Grimes Bryant,

Defendant.

**MEMORANDUM OPINION AND ORDER RE
COMPLAINT TO DETERMINE DISCHARGEABILITY OF DEBT
UNDER 11 U.S.C. § 523**

At issue in this case is a personal Guaranty and a Deed of Trust the debtor and her husband allegedly signed on May 30, 1995. The debtor denies having signed the documents in question and instead alleges that both signatures were forged. The Court conducted a trial in this matter on March 28, 2000. FED. R. BANKR. P. 7001. Pursuant to 28 U.S.C. § 157(b)(2), this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

On August 6, 1993, Keystone Laboratories, Inc., (“Keystone”), and Interstate Pipe Supply, Inc., (“Interstate”), entered into a Factoring Agreement whereby Keystone agreed to purchase from Interstate certain of Interstate’s accounts receivable. At the time this agreement was executed, Rhonda Grimes Bryant, (“Bryant”) was president of Interstate. Bryant continued to serve in such capacity until at least May 30, 1995. During all times at issue in this adversary proceeding, Bryant’s partner in Interstate was Paula Moorman, (“Moorman”).

In early 1995, an audit of Keystone’s accounts determined that Interstate had failed to pay Keystone over \$112,000.00 due and owing under the 1993 Factoring Agreement. As a result of this deficiency, Keystone agreed to extend credit to Interstate in the principal amount of \$112,798.82 plus

interest. This extension was evidenced by a Promissory Note signed by Bryant in her capacity as president of Interstate on May 30, 1995.

Due to the circumstances surrounding Interstate’s failure to pay, Keystone was not willing to extend the \$112,000.00 in credit to Interstate without additional collateral. As a result, Keystone insisted upon obtaining (1) a personal Guaranty from Bryant and her husband, John M. Bryant, and (2) a Deed of Trust on the Bryants’ principal residence.¹ Said Guaranty and Deed of Trust were purportedly signed by the Bryants on May 30, 1995.²

Interstate eventually defaulted on the Promissory Note and Keystone filed suit against Interstate to collect. On June 16, 1996, Interstate filed a chapter 7 bankruptcy petition, effectively bringing the action filed by Keystone to an end.

Unable to recover from Interstate under the Promissory Note, Keystone made claim upon Rhonda and John Bryant upon their Guaranty and Deed of Trust. Bryant failed to abide by her obligations under these documents, alleging that she did not sign them. Keystone then filed suit against Bryant.

There are two main issues in this adversary proceeding: (1) who forged the “John M. Bryant” signatures on the Guaranty and the Deed of Trust; and (2) whether or not Rhonda Bryant’s signatures on the documents are authentic. With respect to the first issue, both the plaintiff and the defendant admit and agree that John Bryant’s signatures on the Guaranty and the Deed of Trust were forged. Keystone alleges that Rhonda Bryant is guilty of the forgery, while the Debtor/Defendant alleges that her ex-business partner, Paula Moorman, forged John Bryant’s signatures. With respect to the second issue, the authenticity of Rhonda Bryant’s signature on the documents, there are four signatures in dispute: (1) Rhonda Bryant’s alleged signature on the Guaranty as the guarantor; (2) Rhonda Bryant’s alleged

¹Keystone also insisted upon obtaining a similar Guaranty and Deed of Trust from Paula Moorman and her husband, Mitchell Moorman.

²Keystone’s President, Melinda Burns, testified at the trial that Keystone would not have extended the \$112,000 in credit to Interstate without obtaining the Guaranty and the Deed of Trust from the Bryants and the Moormans. Burns further testified that she made this requirement very clear to both Bryant and Moorman prior to execution of the Promissory Note.

signature on the Guaranty as the public notary for John Bryant’s signature;³ (3) Rhonda Bryant’s alleged signature on the Deed of Trust as the grantor; and (4) Rhonda Bryant’s alleged signature on the Deed of Trust as the public notary for John Bryant’s signature. Keystone alleges that all four of the Rhonda Bryant signatures on the Guaranty and the Deed of Trust are authentic. The debtor/defendant alleges that, in addition to forging John Bryant’s signatures, Paula Moorman forged Rhonda Bryant’s signatures as well.

Rhonda Bryant’s alleged signatures on both the Guaranty and the Deed of Trust were notarized by Amelia A. Shreve (“Shreve”), an employee at First Tennessee Bank. At the trial, Shreve testified that she did not personally know Bryant at the time the documents were notarized. Shreve further testified that it was her practice to always ask for “photo ID” when notarizing a document for a person she did not know. Shreve stated that she never deviated from this practice while employed at First Tennessee and that, to the best of her knowledge, she did not deviate from this practice in notarizing Bryant’s signatures on the Guaranty and Deed of Trust.⁴

In addition to Amelia Shreve, Keystone called Thomas W. Vastrick, (“Vastrick”), a forensic document examiner, as a witness for the Plaintiff. Based upon his qualifications⁵ and having no

³At the time of execution of the Guaranty and Deed of Trust, Rhonda Bryant was commissioned as a Notary Public in the State of Tennessee.

⁴In cross examining Shreve, debtor’s counsel questioned why Shreve had failed to keep a log book of the documents she had notarized during the time the Guaranty and the Deed of Trust were executed. Shreve answered this inquiry by testifying that First Tennessee was not charging a fee for notary services at that time. This testimony is in keeping with the duties and obligations of Notaries Public in the State of Tennessee. *See* T.C.A. §§ 8-16-300 through 8-16-309 and 8-21-1201. There is no requirement for Notaries Public to maintain a log book unless the notary charges a fee for her services.

⁵Vastrick has a B.S. in Forensic Science, is certified by the American Board for Document Examiners, trained for two years at the Postal Inspection Lab in Washington D.C., is a member of the American Academy of Forensics, conducts forensic document lectures extensively, has had approximately ten papers published in the area of forensic document examination, has a contract with the Memphis Police Department and the D.A. for Shelby County, and has testified as an expert in the field of forensic document examination approximately one-hundred-fifty times.

objection from the defendants, the Court admitted Vastrick as an expert witness in the field of forensic document examination. As a forensic document examiner, Vastrick examines signatures, handwriting, typewriter scripts, etc., for identification or elimination.

Vastrick was originally contacted to examine the documents in this case by David Blaylock (“Blaylock”), Bryant’s former attorney. After having partially carried out his examination of the Guaranty and Deed of Trust, Vastrick informed Blaylock of his initial conclusion that the Rhonda Bryant signatures were authentic on both documents and that Rhonda Bryant had forged John Bryant’s signature on both documents. Based upon these conclusions, Blaylock asked Vastrick not to complete his examination of the documents.

After having been discharged by Blaylock, Vastrick was contacted by Keystone’s attorney, Robert Crawford (“Crawford”) about completing the examination of the Guaranty and the Deed of Trust. Because he had been previously employed by the Bryants, Vastrick could not complete his examination without the Bryants’ consent. Vastrick received the Bryants’ permission and completed his examination of the documents for Keystone by comparing the Bryants’ alleged signatures on the Guaranty and the Deed of Trust with known samples of their signatures.

In examining handwriting, Vastrick stated that he uses a seven-level progressive scale to conclude whether or not a person wrote a signature or document:

- Level 1: Elimination of Person A as the writer
- Level 2: Person A probably did not write the signature
- Level 3: There is evidence that Person A did not write the signature
- Level 4: Cannot identify or eliminate Person A as the writer
- Level 5: There is evidence Person A wrote the signature
- Level 6: Person A probably did write the signature
- Level 7: Full identification of Person A as the writer of the signature

Vastrick testified that he had “full identification” (level 7) of Rhonda Bryant’s signatures on both the “guarantor” and the notary public lines of the personal Guaranty. Vastrick also testified his examination led him to conclude that Rhonda Bryant wrote John Bryant’s signature (level 5) on the “guarantor” line of the Guaranty. With respect to the Deed of Trust, Vastrick testified that he had “full identification” (level 7) of Rhonda Bryant’s signatures on both the “grantor” and the notary public lines. Vastrick also concluded that Rhonda Bryant wrote John Bryant’s signature (level 5) on the “grantor” line of the Deed of Trust.

In an effort to rebuke Vastrick’s conclusions regarding the Bryants’ signatures on the Guaranty and the Deed of Trust, the debtor/defendant called Marty Pearce as an expert witness in the field of document examination.⁶ Pearce testified that it was her conclusion that the same person signed John Bryant’s and Rhonda Bryant’s names to the documents in issue. Pearce also testified, at both the trial and in a deposition, that Rhonda Bryant’s signatures notarizing her husband’s signatures on the Guaranty and the Deed of Trust appeared authentic. When questioned about this conclusion on cross examination, Pearce stated that “sometimes it is difficult to know if [the page with the notary signatures] was actually attached to this document or not;” however, Pearce acknowledged that the page numbering on the documents was consistent in each case and that the computer codes on each document were consistent throughout. No proof was presented that either the Guaranty or the Deed of Trust had been piecemealed together.

Despite the expert witnesses’ conclusions that Rhonda Bryant had notarized her husband’s signatures on the Guaranty and the Deed of Trust, Bryant testified that she had not signed either of the documents. She instead alleged that her ex-business partner Paula Moorman had forged all of the Bryants’ signatures on the Guaranty and the Deed of Trust. At the trial, Bryant stated that Moorman knew where Bryant kept her notary seal at the office and that Moorman had access to it at all times. The debtor also stated that Moorman had signed Rhonda Bryant’s signature on numerous other occasions. In making these accusations, the debtor failed to present any proof that Moorman had in fact forged John or Rhonda Bryant’s signature on the Guaranty or the Deed of Trust. The debtor did not introduce any documents which Moorman had signed with Bryant’s signature in the past. The debtor did not present any proof that Moorman had used Bryant’s notary seal in the past. In fact, Moorman testified that she did not sign the Bryants’ signatures and that Rhonda Bryant had on more than one occasion told Moorman that she had signed the Deed of Trust and the Guaranty and that she had forged her husband’s signatures on both documents.

⁶Pearce is a certified graphology analyst who has been examining and identifying handwriting and documents for thirty years. Pearce received formal training in her field at a four-day workshop and attends seminars approximately every other year. Pearce has testified around thirty times since 1989 as a document examiner.

Based on all the testimony from the trial and the evidence presented, the Court finds that Rhonda Bryant signed the guarantor line of the May 30, 1995, Personal Guaranty as “Rhonda Bryant” and that she signed the grantor line of the May 30, 1995, Deed of Trust as “Rhonda Bryant.” The Court further finds that Rhonda Bryant notarized the “John Bryant” signatures on both the Guaranty and the Deed of Trust.⁷ As a result of these conclusions, the Court finds that the Deed of Trust granted by Rhonda Bryant is authentic and valid as to Rhonda Bryant’s interest in the property referenced therein. The Court further finds that the personal Guaranty granted by Rhonda Bryant is authentic and valid as to Rhonda Bryant.

The conclusions reached by the Court are based most heavily on the testimony of Keystone’s expert witness, Thomas Vastrick. Based on his formal training, professional education, and on-going participation in the field of forensic document examination, the Court found Vastrick to be a highly credible witness. He presented detailed proof of how he arrived at his conclusions that Rhonda Bryant definitely signed the Guaranty and the Deed of Trust. He assembled this proof prior to the trial so that it was presented to the Court in a professional manner.

The Court finds it to be very telling that Vastrick first became involved in this case when he was hired by the debtor/defendant’s ex-counsel to examine the Guaranty and the Deed of Trust. The debtor/defendant’s counsel must have had some faith in Vastrick’s ability in the field of forensic document examination at the time of hiring him. Of course, once Vastrick began to conclude that Rhonda Bryant had indeed signed the documents, debtor/defendant’s counsel quite understandably told Vastrick not to complete his examination.

II. CONCLUSIONS OF LAW

Section 523(a)(2)(A) of the Bankruptcy Code provides that:

- (a) A discharge under section 727, 1141, 1228[a] 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt -

⁷Although the Court believes there are indications that Rhonda Bryant forged the “John Bryant” signatures on the documents, the Court is reluctant to make a definitive finding that Rhonda Bryant did indeed forge the signatures. The evidence as presented at the trial only established that Rhonda Bryant more likely than not signed John Bryant’s name to the Guaranty and the Deed of Trust. The Court concludes that the finding that Rhonda Bryant notarized the forged signature is all that is needed to establish non-dischargeability under 11 U.S.C. § 523(a).

...
(2) for money, property, services, an extension, renewal, or refinancing of credit, to the extent obtained, by -
(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s or an insider’s financial condition.

11 U.S.C. § 523(a)(2)(A). The terms “false pretenses,” “false representation” and “actual fraud” are not defined by the Bankruptcy Code. As a result, courts have had the responsibility for setting their boundaries. In the case of Field v. Mans, the U.S. Supreme Court held that the terms used in § 523(a)(2)(A):

... carry the acquired meaning of terms of art. They are common law terms, and ... in the case of “actual fraud,” ... they imply elements that the common law has defined them to include.

Field, 516 U.S. 59, 116 S.Ct. 437, 443 (1995).

In following the Supreme Court mandate announced in Field v. Mans, all courts have unanimously held that, as used in § 523(a)(2)(A), “[a]ctual fraud involves moral turpitude and does not include fraud implied in law which may exist without imputation of bad faith or intentional wrong.” In re Pommerer, 10 B.R. 935, 939 (Bankr. D. Minn. 1981); Palmacci v. Umpierrez, 121 F.3d 781 (1st Cir. 1997). For a creditor to succeed in excepting a debt from discharge, the debtor must have engaged in some conduct which can be fairly said to be “blameworthy.” In re Anderson, 181 B.R. 943, 948 (Bankr. D. Minn. 1995). If a creditor is unable to show that the debtor acted with a deliberate intent to deceive, he will be unsuccessful in his claim.

In addition to agreeing on what type of fraudulent behavior § 523(a)(2)(A) covers, courts are also unanimous in the procedural aspects of such an action. First, the party asking for the exception to discharge bears the burden of proof in a § 523(a)(2)(A) cause of action. In re Martin, 698 F.2d 882, 887 (7th Cir. 1983). Secondly, exceptions to discharge are to be strictly construed against the creditor and liberally in favor of the debtor. In re Zarzynski, 771 F.2d 304, 306 (7th Cir. 1985). Thirdly, all courts agree that the burden of proof on the objecting creditor is a preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 291 (1991). These approaches have received widespread acceptance from courts because they are thought to further the well-espoused bankruptcy policy of granting the honest, but

unfortunate debtor a fresh start in bankruptcy. In re Balzano, 127 B.R. 524, 529 (Bankr. E.D.N.Y. 1991); Local Loan Co. v. Hunt, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934).

Another well-settled area of § 523(a)(2)(A) law concerns the elements of proof that a claim for an exception to discharge includes. In order to have a debt declared nondischargeable pursuant to this section, the creditor must prove (1) the debtor made a material representation, (2) the debtor knew the representation was false at the time of making it, or made the representation with gross recklessness as to the truth, (3) the debtor made the representation with the intention of deceiving the creditor, (4) the creditor justifiably relied upon such representation, and (5) the creditor sustained loss and damage as the proximate result of the representations. In re McLaren, 3 F.3d 958 (6th Cir. 1993), Field, 116 S.Ct. At 446.

When she notarized John Bryant’s signatures on the Guaranty and the Deed of Trust, Rhonda Bryant made the material representation that John Bryant had signed the documents in her presence. Despite this attestation, Rhonda Bryant stipulated at the trial that John Bryant did not sign the Guaranty or the Deed of Trust. Based on these facts, there is no other conclusion for the Court to reach but that Rhonda Bryant knew at the time she notarized her husband’s signature that he was not the person who signed “John Bryant” to the documents.

Keystone’s President, Melinda Burns, testified at the trial that, but for the personal Guaranties and the Deeds of Trust executed by the Bryants and the Moormans, Keystone would not have extended the \$112,000 in credit to Interstate. Burns further testified that she clearly communicated this requirement of additional security to Rhonda Bryant and Paula Moorman prior to execution of the \$112,000 Promissory Note which was signed by Bryant in her capacity as President of Interstate.

Based on this testimony, the Court finds that Rhonda Bryant knew, at the time of notarizing John Bryant’s forged signatures, that Keystone would not have extended the \$112,000 in credit to Interstate without the personal Guaranty and the Deed of Trust from Rhonda and John Bryant. When Rhonda Bryant notarized her husband’s forged signature, she did two things. First, she made a representation that she knew was false at the time of making, namely that her husband had signed the documents. Secondly, she made a representation with the intention of deceiving the creditor, namely that John Bryant had consented to obligating himself personally on one of Interstate’s debts.

Under the Sixth Circuit’s guidelines for a § 523(a)(2)(A) action, the Court concludes that Keystone has proven it is entitled to a non-dischargeable judgment against the debtor. The proof clearly established that Rhonda Bryant made a representation which she knew was false at the time of making it and that Rhonda Bryant made the representation with the intention of deceiving Keystone. The proof also established that Keystone justifiably relied on the representation and that they suffered a loss as a result.

III. ORDER

It is therefore **ORDERED** that the Complaint to Determine Dischargeability of Debt Under 11 U.S.C. § 523 is **GRANTED**.

It is **FURTHER ORDERED** that parties shall have thirty days from entry of this Order to contact Judge Boswell’s Courtroom Deputy to schedule a hearing for the determination of damages.

IT IS SO ORDERED.

By the Court,

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: May 23, 2000